United States Court of Appeals

for the Second Circuit

APPELLEE'S BRIEF

Orig w/ affidavit of mailing

75-7214

To be argued by
LEWIS F. TESSER

by. Sheldon Ostro.

7-2-7

B P/S

United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 75-7214

GRACE TOWERS TENANTS ASS'N, an unincorporated association; and BENNIE MASON, individually and as President of GRACE TOWERS TENANTS Association and ELIZABETH BOONE, individually and as Secretary of GRACE TOWERS Association, and on behalf of all others similarly situated,

Plaintiffs-Appellants,

—against—

GRACE HOUSING DEVELOPMENT FUND CO., INC., JACOB UNDERWOOD, individually and as President of GRACE HDFC CO., INC., MARIA EVANS, individually and as Managing Agent of GRACE HDFC, Inc., and JAMES T. LYNN, as Secretary of the United States Department of Housing and Urban Development.

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

BRIEF FOR DEFENDANTS-APPELLEES

DAVID G. TRAGER,
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United States Court of Appeals

FOR THE SECOND CIRCUIT

Docket No. 75-7214

GRACE TOWERS TENANTS ASS'N, an unincorporated association; *et al.*,

Plaintiffs-Appellants,

— against —

GRACE HOUSING DEVELOPMENT FUND CO., INC., JACOB UNDERWOOD, *et al.*,

Defendants-Appellees.

BRIEF FOR DEFENDANTS-APPELLEES

Preliminary Statement

Plaintiffs appeal from an order of the United States District Court for the Eastern District of New York (Bruchhausen, *J.*) dated January 15, 1975, denying the motion of the plaintiffs for a preliminary injunction and dismissing the complaint. Plaintiffs' complaint, brought pursuant to 28 U.S.C. §§ 1331, 1337, 1343 and 1361 and 5 U.S.C. 702, sought injunctive and declaratory relief to enjoin the increase of rents and to declare said rent increases unconstitutional.

On this appeal, plaintiffs-appellants contest the trial court's decision because they contend that the trial judge erred in holding that they were not denied due process protections and that the determination of the Secretary of Housing and Urban Development, which approved the rent increase, was unreviewable.

Counterstatement of Issues

I. Were appellants denied due process? The court below answered in the negative.

II. Should regulations promulgated by a federal administrative agency be given retroactive application by a district court if those regulations were not in effect at the time of the agency decision nor at the time of the effective date of the agency action, especially in view of the fact that the issue of retroactive application was not raised at trial and that manifest injustice would result if the regulations were applied retroactively. The issue was not presented to the court below.

III. Should courts review the decision by the Secretary of Housing and Urban Development to approve a rent increase for a private non-profit corporation? The court below answered in the negative.

Statement of the Case

Grace Housing Development Co., Inc. (Grace) is a non-profit housing corporation incorporated for the purpose of providing housing to families of low and moderate income in Grace Towers. Grace Towers consists of two buildings of 84 units each, at 272 Pennsylvania Avenue and 2066 Pitkin Avenue, Brooklyn, New York. The project is federally subsidized pursuant to Section 221(d)(3) of the National Housing Act and Grace receives rent supplementation from about 10% of the tenants (A. 86 DC).*

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* "A" followed by a number hereinafter represents pages in the Appendix to the brief. "DC" refers to the Memorandum and Decision of the District Court.

In June, 1974, Grace applied to the Secretary of Housing and Urban Development (HUD) for rent increases. Documents were submitted to HUD reflecting the operation costs, income received, balance sheets and other material substantiating a deficit operation (A. 86 DC). In August, 1974, HUD approved a 23% rent increase, effective October 1, 1974 (A. 87 DC).

On August 27, 1974, Grace sent letters to all tenants advising them of the increase (A. 75(a)). Additionally, Grace requested, and subsequently attended a meeting with the tenants in the last week of August (A. 147). At the meeting, Grace informed the tenants about the increase and why it was necessary. Grace also informed the tenants as to procedures they might follow if they thought the increase were unjustified (A. 160). This information included the name of the responsible official to contact at the local office of HUD (A. 160).

Thereafter, the tenants' association, plaintiffs in this action, obtained counsel—Thomas Rothschild, East New York Legal Services (A. 158). Counsel requested and obtained a meeting with George Brown, the responsible HUD official.

On September 10, 1974, George Brown, acting Loan Manager, and an unidentified official from HUD met with Igou Allbray, a law clerk with East New York Legal Services. Allbray came to the meeting to ask for information regarding the rent increase. He came with documents (A. 190) and with information from the tenants in opposition to the increase (A. 169). The documents were neither offered nor refused (A. 190-191). Verbal presentations of the tenants' objections were made but they were not presented as "materials" and both sides considered them only as allegations. Consequently, it was agreed that another meeting would be held and that the tenants could attend and present evidence (A. 181).

Allbray requested that legal counsel and their accountant be allowed to present submissions. Brown indicated that this would be acceptable (A. 181). No material, however, was ever submitted (A. 190-193).

On September 16 or 17, a new meeting between HUD and the tenants was scheduled for September 20 (A. 172, 182). Allbray requested that the effective date of the increase be delayed. Without granting or denying the request, Brown suggested that it would be more appropriate to first proceed with the September 20*th* meeting. Thereafter, no delay of the effective date was requested (A. 197).

On September 20, 1974, a meeting was held with officials of HUD, including Brown (A. 154, 164). At least five or six people representing the tenants' association were present with Allbray (A. 155, 163-67). The materials submitted by Grace in support of the rent increase were immediately made available to the tenants and their counsel (A. 164). Brown was asked for the basis on which HUD granted the increase (A. 180). He responded by saying that HUD considered matters such as mortgage payments, electricity, fuel, gas, utility costs, and maintenance costs (A. 175). He also stated and confirmed in writing that if the tenants could disprove the accuracy of the rent increase presentation, HUD would reconsider the increase (A. 192, 287). The meeting lasted more than an hour (A. 186-187).

Following the meeting, Allbray spoke with Brown and said that the materials had been submitted to an accountant who had indicated that some materials were either missing or questionable and that the accountant needed more information (A. 189). However, no accountant's report was ever submitted to HUD (A. 193, 198). Nor was another meeting requested (A. 189).

The rent increase became effective on October 1, 1974, and nothing was ever submitted to HUD nor was further

relief requested from HUD until the institution of suit on December 6, 1974.

On January 9, 1975, a trial was conducted to determine whether the rent increase should be enjoined on the grounds that plaintiffs were denied due process. A judgment was rendered on January 15, 1975. The Court held that plaintiffs were not denied due process,* and that the determination of HUD was not reviewable. The plaintiffs' motion for a preliminary injunction was denied and the complaint was dismissed (A. 85-91, DC).

Summary of Argument

On this appeal appellants claim that due process required that they be afforded notice and a hearing prior to the imposition of the 23% rent increase which was necessitated by the economic condition of the housing project. Alternatively, they claim that the subsequently enacted regulations of the Department of Housing and Urban Development—regulations that provided tenants with the opportunity to oppose rent increases—should have been applied retroactively by the district court to the facts in this case. Finally, in the third point of their brief, appellants claim, independently of their due process and regulatory arguments, that they have the right to seek judicial review of the propriety of the rent increase and approval by HUD.

On this appeal the appellees believe that the necessity for notice and hearing under the due process clause in

* Subsequent to the effective date of the rent increase, but prior to the decision of the District Court, HUD promulgated regulations (21 CFR §§ 401.1-404.4) which establish procedural standards to be utilized by HUD in determining the propriety of rent increases. Whether these regulations should be applied retroactively and, if so, whether they were complied with is at issue in this appeal.

connection with projects funded under § 221(d)(3) has already been decided by this Court in *Langevin* v. *Chenango Court, Inc.*, 447 F.2d 296 (2d Cir. 1971). In that case this Court determined that the tenants in such a project were not entitled to a full hearing in order to contest a rent increase. Notwithstanding this Court's holding in *Langevin* "that such a procedure . . . was not mandated . . . by the due process clause of the Fifth Amendment" (*ibid.* at 302), we also maintain that the "desirable" hearing spoken of in *Langevin* was afforded to these appellants.

On the issue of retroactivity we maintain that the appellants' complete failure to raise this contention in the district court, when it might have been raised timely and resolved, precludes appellants from raising it in this court. We also believe that fundamental principles governing the application of statutory and regulatory provisions prohibit the retroactive application of these regulations.

Finally, on the issue of judicial review we cannot understand how appellants have failed to notice the clear holding in *Langevin* that the propriety of this rent increase and approval by the Department of Housing and Urban Development of that increase is not subject to judicial review.

ARGUMENT

POINT I

The ad hoc procedures followed by HUD afforded appellants the protection of due process.

Appellants claim that the rent increase granted by HUD should be invalidated because of HUD's alleged failure to provide the tenants' association with due process. However, the facts in the instant case clearly demonstrate that the appellants were not only afforded the same rights which it is now claimed were denied them, but that the appellants were afforded procedural rights beyond those which the due process clause requires.

In *Langevin* v. *Chenango Court, Inc.*, 447 F.2d 296 (2d Cir. 1971), this Court was confronted with a similar due process claim. Chenango, like the appellee, was a housing project federally subsidized pursuant to Section 221(d)(3) of the National Housing Act. After Chenango Court filed an application with the FHA requesting a rent increase, it notified its tenants of the pending increase. The tenants, in turn, requested access to all information submitted by Chenango relevant to the rent increase and the opportunity to present opposing material. FHA officials refused these requests. The tenants brought an action against Chenango to void the rent increases claiming that *inter alia*, the tenants had been denied due process. After this court stated its finding that FHA had not denied plaintiffs due process, it discussed a procedure that the FHA might require of landlords seeking rent increases. The Court mentioned items such as giving notice, making data available to tenants, allowing tenants to submit short written submissions and providing a statement of reasons for granting approval to the rental increase. Such a procedure, the Court said, would aid both the FHA and the tenants. The Court then stated that "even such a procedure,

however desirable, was not mandated by any relevant statute or by the due process clause of the Fifth Amendment." *Ibid,* at p. 302.

The finding of this Court that the tenants in *Langevin* had not been denied due proces compels the conclusion that the appellants in the instant case were afforded procedural rights beyond those which the due process clause requires.

In *Langevin* the tenants were casually notified by Chenango of the pending rent increase. In the instant case appellants were individually notified by letter of the pending rent increase on August 27, 1974, two months prior to the effective date of the increase (A. 153-54, 156) and the tenants were personally notified before then at a meeting requested by the Grace Management (A. 158). They were there informed of the appropriate HUD officials with whom to discuss the rent increase (A. 160). Certainly, tenants had sufficient time in which to contest the increase.

In *Langevin,* the FHA officials refused the tenants' demand for access to the information submitted by the landlord relevant to the rent increase. In the instant case appellants also asked to inspect the materials that the housing project had submitted to HUD in support of its application for the rent increase. Bennie Monroe, the President of the tenants' association, testified that HUD had complied with appellants' request and that all of the material that HUD had considered was "laid out when we got [to the meeting] . . ." (A. 164). Moreover, the material was photocopied by HUD and delivered to the appellants for their further inspection (A. 166, 188).

In *Langevin,* the FHA officials refused the tenants an opportunity to present opposing material. In the instant case, not only were tenants allowed such an opportunity, but they were repeatedly requested to provide such material. The tenants were advised by HUD officials that if they

had "any evidence of fraud or inaccuracies" regarding the increase, the information should be submitted to HUD for its consideration (A. 187-188). In addition, the tenants were informed by HUD of its willingness to rescind the rent increase (A. 192).

Appellants cite *Burr* v. *New Rochelle Municipal Authority*, 479 F.2d 1165 (2d Cir. 1973) as an example of adequate due process procedures to be followed in the context of rent increases in public housing. In *Burr*, a case unlike the instant action because the landlord was a governmental body, this Court stated that: "There need be no opportunity for oral presentation." *Ibid.* at 1170. Nevertheless, the tenants in the instant case were provided with such an opportunity. When appellants' counsel requested a meeting HUD officials responded promptly. They held two meetings with appellants and their counsel, and engaged in at least three telephone conversations with counsel to discuss the rent increases.

The appellants' major contention is that they were denied due process because they were not provided notice of the proposed increase until after HUD initially determined to grant it. This contention begs the question. In order to contest the rent increase, appellants requested the opportunity to present submissions of written legal arguments and accountants' reports. HUD granted the request (A. 181) but appellants did not submit these materials nor any other materials supportive of their allegations that the rent increase was inappropriate (A. 190-193).

Finally, it is clear that the tenants received a reasoned decision for the increase. The tenants were given the entire file that was submitted to support the increase (A. 164, 166, 188) and the officials explained the factors that HUD considered in granting the increase (A. 175). The entire transcript reveals that appellants were well represented, that they and their counsel asked questions

of HUD and that HUD officials answered fully, fairly and responsively.

Certainly, if the tenants were not denied due process in *Langevin*, it would be anomalous to conclude that the tenants in this action had been denied due process. Appellants had notice of the increase, they had an opportunity to submit relevant materials (although none were submitted) and they were fully informed of the reasons for the increase. HUD officials at all times acted fairly, and appellants were afforded due process.

POINT II

24 C.F.R. §§401.1-401.4 should not be applied retroactively.

A. Appellants have waived their right to appeal this issue because it was not raised at trial.

Appellants contend that regulations adopted by HUD after the effective date of the contested rent increase should have been retroactively applied by the District Court.* Although these regulations existed at the time of the trial, appellants failed to make any mention of these same regulations uopn which they now base their appeal.

A reviewing court will ordinarily confine itself to those questions and issues raised below. *Delgadillo* v. *Carmichael*, 332 U.S. 388 (1947); *McCullough* v. *Kammerer Corp.*, 323 U.S. 327 (1945). This policy reflects "considerations of

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* Appellants concede that HUD acted consistently with its regulations in effect at the time of the increase. Appellees have asserted (POINT I) that regardless of whether or not those regulations provided for due process protections, the *ad hoc* actions of HUD afforded appellants due process.

fairness to the court and to the parties and of the public interest in bringing litigation to an end after fair opportunity has been afforded to present all issues of law and fact." *United States* v. *Atkinson*, 297 U.S. 157, 159 (1936). It prevents the trial of cases piece meal or in installments. It tends to put an end to litigation." *Helvering* v. *Rubenstein*, 124 F.2d 969, 972 (8th Cir. 1942).

The rule however is not inflexible or absolute. In exceptional cases, where injustice would result, a reviewing court may be prompted to consider questions of law neither presented to nor decided by the trial court. *Hormel* v. *Helvering*, 312 U.S. 552, 557 (1941); *Lawn* v. *United States*, 355 U.S. 339 (1958). This course is, however, to be pursued sparingly. *United States* v. *Atkinson*, 297 U.S. at 160. *Accord Scott* v. *Central Commercial Co.*, 272 F.2d 781 (2d Cir. 1959), *cert. denied*, 363 U.S. 806 (1960).

In the case at bar, the issue of retroactivity was neither raised nor decided in the District Court, thus appellants should be precluded from raising this issue for the first time on appeal. Appellants' contention at trial that they were denied due process certainly did not define for the District Court or the appellee the contention that they are now asserting. It is clear that judicial action sought on one ground is not sufficient to enable a party to invoke another on appeal. *Sucher Packing Co.* v. *Manufacturers Casualty Insurance Co.*, 245 F.2d 513, 518-519 (6th Cir. 1957), *cert. denied*, 355 U.S. 956 (1958); *Knight* v. *Loveman, Joseph & Loeb, Inc.*, 217 F.2d 717, 719 (5th Cir. 1954); *Johnston* v. *Reily*, 160 F.2d 249, 251 (D.C. Cir. 1947).

Furthermore, appellants do not present any circumstances which would lead this Court to deviate from the general rule. *See Hormel* v. *Helvering*, *supra*. A party once defeated should not be permitted to have another

day in court to try his case on a different theory. Appellee Grace Towers has been prejudiced by the fact that it was unable to present certain factual issues at trial which would have been relied upon, on appeal, to rebut appellant's present contention that the regulations should be applied retroactively. Appellee has thus been taken by surprise by the assertion of this issue months later on appeal and injustice would result if appellant were permitted to raise the issue of retroactivity at this late date when the rent increases have already taken effect.

B. The new HUD regulations should not be applied retroactively.

There is a long-standing rule of construction which favors prospective rather than retrospective application of legislation "except upon the clearest mandate." *Claridge Apartments Co.* v. *Commissioner of Internal Revenue*, 323 U.S. 141, 164 (1944). In construing legislation, courts have rigorously adhered to the principle that, "a retrospective operation will not be given to a statute which interferes with antecedent rights . . . unless such be 'the unequivocal and inflexible import of the terms and manifest intention of the legislature.'" *Union Pacific Railroad Co.* v. *Laramie Stock Yards Co.*, 231 U.S. 190, 199 (1913), quoting *United States* v. *Heth*, 7 U.S. 399 (1806). Thus, courts in determining when a statute is to be applied retroactively must first determine if the statute interferes with antecedent rights, and, if so, the court must then look to legislative intent. *See Union Pacific Railroad Co.* v. *Laramie Stock Yards Co., supra.*

Consistent with the general rule of prospective application, the law is clear that where manifest injustice presents itself, the law will never be applied retroactively. *See, e.g., Bradley* v. *School Board of City of Richmond*, 94 Sup. Ct. 2006 (1974); *Thorpe* v. *Housing Authority of the City of Durham*, 393 U.S. 265 (1969). It is only when

there would be a minimal disturbance of antecedent rights that the courts will consider retroactive application *Vandenbark* v. *Owens-Illinois Glass Co.*, 311 U.S. 538 (1941); *Carpente. v. Wabash Railway Co.*, 309 U.S. 23 (1940).

The *Thorpe* case, upon which the appellants entirely base their claim is in fact not only consistent with the traditional mode of analysis, but supportive of appellee's position herein. In *Thorpe,* the court reviewed a summary ejectment proceeding which sought to remove a tenant from an apartment in a federally assisted low rent housing project. The court held that the tenant was entitled to those eviction procedures provided for in a HUD circular, even though the circular had been issued after the eviction proceedings had been initiated. The court's analysis, however, went no further than the initial inquiry: whether the retroactive application of the statute or administrative regulation would interfere with the antecedent rights of the Housing Authority. The court concluded that because the tenant had not yet vacated her apartment, to require the Authority to comply with the new HUD regulations did not constitute in any way an imposition or infringement upon the rights of the Authority 393 U.S. at 283. There was at most a minimal disturbance of antecedent rights and therefore retrospective application, an exception from the traditional rule, was appropriate. *See, e.g., Greene* v. *United States,* 376 U.S. 149 (1964).

The instant case is readily distinguishable from *Thorpe.* The retroactive application of HUD's new regulations would substantially interfere with the antecedent rights of the Grace Towers project and cause undue harm to the present tenants. The rent increase had been approved and effected, tenants were notified, and tenants' meetings with HUD were held—all prior to the effective date of 24 C.F.R. §§ 401.1 et seq. This is in direct contrast to the pending eviction of the tenant in the *Thorpe* case. The retroactive application of new administrative regulations in *Thorpe* did not propose

to undo an act which had proceeded to completion. Such would be the situation if the reasoning of *Thorpe* were followed and the Grace Towers project's rent increase declared void.

The payment of the rent increase which the Grace Towers project is legitimately receiving would be temporarily suspended and perhaps permanently lost if the new regulations were given retroactive effect. This situation would place Grace Towers project in dire financial straits. A mortgage default and eventual foreclosure would be imminent (A. 73)—a situation that would leave the tenants without adequate housing. Thus the *Thorpe* exception to the general rule cannot be applied in this case without manifest injustice and harm to the tenants as well as to the Grace Towers project.

A case very similar to the one at bar is *Citizens to Preserve Overton Park* v. *Volpe*, 401 U.S. 402 (1971). At issue was the retroactive application of an administrative regulation to an approval by the Secretary which had taken place before the regulation was in effect. The court rejected plaintiffs' argument that *Thorpe* was controlling and found that an interference with antecedent rights would occur. Thus the regulation was limited to a prospective application. The court distinguished *Overton Park* from *Thorpe* by noting that there had been a change in circumstances: certain actions had been taken in reliance upon the Secretary's decision. Thus to have vacated or delayed this decision in order to comply with the new regulations would have caused far more than the mere imposition felt in *Thorpe*. Similarly, the Grace project has relied on the rent increase. Service and supply contracts have been made, and, loan repayment schedules have been deferred on the basis of the increase. See also, *South East Chicago Commission* v. *Department of Housing and Urban Development*, 488 F.2d 1119 (7th Cir. 1973).

In addition to an interference with antecedent rights, the court in *Overton Park* also recognized that there had been an adequate administrative record to enable the court to fully and promptly review the Secretary's action without resort to the formal findings mandated by the new regulations. This kind of substantial compliance can also be found in the case at bar (Appellees' Brief, Point I). Thus, appellants have suffered little or no prejudice.

Although the Supreme Court does recognize that in certain situations (such as the one presented in *Thorpe*) retroactive application is appropriate, the court continues to acknowledge that where manifest injustice would result, retroactive application is to be avoided. *See Bradley* v. *School Board of City of Richmond, supra; Greene* v. *United States, supra.* Certainly it is apparent that such manifest injustice would be inevitable if the new HUD regulations were to be applied retroactively to the case at bar. If the project were deprived of previously paid money, the sponsors would undoubtedly be unable to meet their financial commitments, which would endanger the very existence of Grace Towers. Furthermore, as previously stated there had been changes in circumstances predicated upon the already approved rent increase prior to the promulgation of the regulations. Finally, the Grace Towers Tenants Association waited until over two months after the rent increase had become effective before they filed their complaint and thus are largely responsible for Grace's present situation. If the tenants had taken immediate action when they learned that the rent increase was to go into effect, Grace Housing project would not have made future commitments in reliance upon the increase. The tenants delayed their action until Grace's right to receive the increase had become unconditional and vested. It would clearly be inequitable to retroactively apply these regulations to a situation that was in part caused and aggravated by the appellants' inaction in this present matter.

24 C.F.R. §§ 401. et seq. clearly does not provide for retroactive application. Moreover, the manifest injustice that would result if HUD's regulations were to be applied retroactively mandates prospective application of these regulations.

POINT III

The rent increase is not subject to judicial review.

Appellants finally claim that HUD's approval of the rent increase was based on insufficient evidence. However, it is clear that HUD's action is not subject to judicial review.

Appellants have ignored this Court's decision in *Langevin* v. *Chenango Court, Inc.*, 447 F.2d 296 (2d Cir. 1971), in which the question was raised whether the District Court could review an FHA approval of a rent increase for a low to moderate income housing project which was federally assisted under § 221 of the National Housing Act. This is the precise issue in the case at bar. Contrary to appellants' contention that there was no legislative intent to restrict access to judicial review, this Court held that the provisions of 5 U.S.C. § 701(a) precluded judicial review of 221(d)(3) because Congressional intent was discernible to make FHA's action unreviewable.* The court also stated that:

> We hold only that a mere claim of error, even of gross error, is not enough to escape the second exception in 5 U.S.C. § 701(a). And, whatever bounds

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* Under 5 U.S.C. § 702 one "suffering a legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof." However, reviewability does not exist to the extent that "statutes preclude judicial review" or "agency action is committed to agency discretion." 5 U.S.C. § 701(a).

> the due process clause may set upon non-reviewability of agency action, [citations omitted] no case goes to the extent of holding that due process mandates judicial review of an order approving—on the basis of an ex parte submission of facts—a rent increase to a landlord who has benefited from a federal aid program. *Ibid,* 303-304.

This holding is in agreement with decisions from the First, Third and Seventh Circuits *Harlib* v. *Lynn,* 511 F.2d 51, 56 (7th Cir. 1975); *People's Rights Organization* v. *Bethlehem Associates,* 356 F. Supp. 407, 410-411 (E.D. Pa.), *aff'd,* 487 F.2d 1395 (3d Cir. 1973); *Hahn* v. *Gottlieb,* 430 F.2d 1243, 1249-1251 (1st Cir. 1970).

CONCLUSION

The order of the District Court should be affirmed.

Dated: June 30, 1975

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* The United States Attorney's Office wishes to acknowledge the assistance of Joan Suttin Wile in the preparation of this brief. Ms. Wile is a third year law student at Brooklyn Law School.

AFFIDAVIT OF MAILING

STATE OF NEW YORK
COUNTY OF KINGS
EASTERN DISTRICT OF NEW YORK, ss:

EVELYN COHEN, being duly sworn, says that on the 2nd day of July, 1975, I deposited in Mail Chute Drop for mailing in the U.S. Courthouse, Cadman Plaza East, Borough of Brooklyn, County of Kings, City and State of New York, a BRIEF FOR DEFENDANTS-APPELLEES of which the annexed is a true copy, contained in a securely enclosed postpaid wrapper directed to the person hereinafter named, at the place and address stated below:

Thomas N. Rothschild, Esq.
East New York Legal Services
503 Pennsylvania Avenue
Brooklyn, New York 11207

Evelyn Cohen

Sworn to before me this
2nd day of July, 1975

Olga S. Morgan

OLGA S. MORGAN
Notary Public, State of New York
No. 24-4501966
Qualified in Kings County
Commission Expires March 30, 1977

XE NOTICE that the within
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man Plaza East, Brooklyn,
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o'clock in the forenoon.

, New York,
_____, 19____

_____
States Attorney,
for _____

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in the office of the Clerk of
Court for the Eastern Dis-
k,
New York,
_____, 19____
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tates Attorney,
for _____

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_____ Action No._____

UNITED STATES DISTRICT COURT
Eastern District of New York

—Against—

_____

United States Attorney,
Attorney for _____
Office and P. O. Address,
U. S. Courthouse
225 Cadman Plaza East
Brooklyn, New York 11201

Due service of a copy of the within _____
_____ is hereby admitted.
Dated: _____, 19____

_____
Attorney for _____

FPI-LC-SM-6-73-7388